

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Deer Creek Corp.,
Appellant,

v.

Nemaha County Board of Equalization,
Appellee.

Case No: 12A 050

Decision Affirming the Determination of the
Nemaha County Board of Equalization

1. A Single Commissioner hearing was held on December 16, 2013, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
2. J. Randel Smith, President of Deer Creek Corp. (the Taxpayer) was present at the hearing.
3. Dylan Handley, Nemaha Deputy County Attorney, was present for the Nemaha County Board of Equalization (the County Board).
4. The Subject Property is a 234.11 acre agricultural parcel in Nemaha County, Nebraska.
5. The Property Record File and legal description of the Subject Property parcel are found in the Case File.

Background

6. The Nemaha County Assessor (County Assessor) assessed the Subject Property in appeal 12A 050 at \$573,925 for tax year 2012.
7. The Taxpayer protested this value to the County Board and requested an assessed value of \$370,885 for tax year 2012.
8. The County Board determined that the taxable value of the Subject Property was \$573,925 for tax year 2012.
9. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
10. The Commission consolidated for purposes of the hearing multiple parcels of agricultural land in Nemaha County.¹ The evidence, statements, and assertions for all of the appeals were the same.

Issues & Analysis

11. The Commission’s review of the determination of the County Board of Equalization is de novo.² “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo

¹ Consolidated for hearing were all parcels in Cases 12A 031 to 12A 050.

on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal."³

12. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."⁴ That presumption "remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board."⁵
13. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁶
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
15. "Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution."⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁹ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹⁰
16. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.¹¹
17. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.¹² Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual

² See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

³ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ *Neb. Const.*, Art. VIII, §1.

⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

¹¹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

value.¹³ The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹⁴

18. If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”¹⁵ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.¹⁶
19. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”¹⁷
20. Mark Caspers, a farm manager of the Subject Properties and a Certified General Appraiser in Nebraska, asserted that the Subject Properties were not equalized with certain irrigated land in Nemaha County.
21. Caspers provided the Commission with a property record card for a sale, known as the Oestmann Farms sale, which occurred on March 11, 2011. The sale involved four parcels of land with a total sale price of \$940,000.
22. Subsequent to this sale, the four parcels were assessed in tax year 2012 for a combined total of \$351,195.
23. Caspers asserted that the actual value of the four parcels was established in the March 11, 2011, sale. He further asserted that the County Assessor had, therefore, assessed the parcels involved in the sale at only 37% of actual value ($\$351,195/\$940,000 = .37$).
24. Caspers argued that this assessment to sale ratio violated the principles of equalization because in comparison the Subject Property was valued at 69% to 75% of actual value.
25. For purposes of this appeal the Commission takes notice of the Reports and Opinions (R & O) for Nemaha County, from the 2012 Statewide Equalization hearings.¹⁸
26. The Commission notes that the R & O indicates the land capability groupings (LCGs) for agricultural land in Nemaha County. The Commission further notes that all agricultural land in Nemaha County was included in the same market area for tax year 2012.¹⁹
27. Caspers asserted that the County Assessor had inappropriately valued some irrigated LCGs at a lower value per acre than some of the dryland LCGs. Caspers asserted that this was not supported by the market.
28. The Commission notes the following irrigated LCG values per acre as recorded in the R & O at page 37:

¹³ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

¹⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

¹⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁶ *Id.* at 673, 94 N.W.2d at 50.

¹⁷ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁸ See, Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹⁹ See, Exhibit 64, Report and Opinions for Nemaha County, from the 2012 Statewide Equalization hearings.

1A1	1A	2A1	2A	3A1	3A	4A1	4A
\$2,951	\$3,122	\$2,458	\$2,806	\$2,022	\$2,541	\$1,412	\$1,248

29. The Commission notes the following dryland LCG values per acre as recorded in the R & O at page 37:

1D1	1D	2D1	2D	3D1	3D	4D1	4D
\$2,933	\$2,991	\$2,652	\$2,038	\$1,718	\$2,267	\$1,471	\$1,018

30. The Commission also notes that there were 87 sales of agricultural land in Nemaha County from July 1, 2008, through June 30, 2011, the three year window used to value agricultural property for tax year 2012.
31. The Commission has reviewed the property record cards for the parcels involved in the Oestmann Farms sale. The Commission notes that the property record cards indicate the assessed value per acre for each LCG present on the parcels.
32. Additionally, the Commission has reviewed all of the property records cards for all of the Subject Properties.
33. The Commission finds that LCGs were assigned a consistent per acre value in all instances where an LCG was present on the Oestmann Farms parcels and on any of the Subject Property parcels.
34. The Commission finds that because the assessed value per acre per LCG was consistent for all properties, even if the Oestmann Farms sales were valued at less than actual value, the Subject Properties also received the same valuation per acre.
35. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
36. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.
37. The Taxpayer has not adduced sufficient clear and convincing evidence that valuation placed on the Subject Properties when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Nemaha County Board of Equalization determining the value of the Subject Property for tax year 2012, is affirmed.

2. The taxable value of the Subject Property for tax year 2012 is \$573,925.
3. This Decision and Order, if no further action is taken, shall be certified to the Nemaha County Treasurer and the Nemaha County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2012.
7. This Decision and Order is effective on January 14, 2014.

Signed and Sealed: January 14, 2014

Robert W. Hotz, Commissioner